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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/683,761	02/11/2002	Robert J. Smith	2103-020243	5580

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THE WEBB LAW FIRM, P.C.
700 KOPPERS BUILDING
436 SEVENTH AVENUE
PITTSBURGH, PA 15219

EXAMINER

NGO, LIEN M

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 04/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/683,761	Applicant(s) SMITH ET AL.	
	Examiner LIEN TM NGO	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The finality of that action dated 10/6/03 has been withdrawn and replaced by new ground rejections as following:

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5 and 8-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Adams et al. (6,095,375).

Adams et al. disclose, in figs.2, 7 and 8, a container closure comprising a shell body 30 attachable to a container, the shell having a central stem 62, a tip 70, a cover 90 having internally extending ribs 98 engagable with the tip when the cover is attached to the shell, and wherein the ribs are attached to a top of the cover and having a curved inner surface (see fig. 8) and a bevel lower edge (see fig. 7). The cover further comprising a shell-engaging member 47, a cover-attaching member 99 releasably attached with a groove 64 on the stem.

4. Claims 8-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Boissay (5,992,692).

Boissay discloses, in fig. 1, a cover 16 having internally extending ribs 56 engagable with a tip when the cover is attached to a shell, and wherein the ribs are attached to a top of the cover and having a curved inner surface (at the outer

coner) and a bevel lower edge . The cover further comprising a shell-engaging member 50, a cover-attaching member 58 releasably attached with a groove 34 on the stem.

The statement of intended use of “ a dust cover for a container closure ...” has been carefully considered, but deemed not to imposed any structural limitations on the claims distinguished over the cover of Boissay. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2, USPQ2d 1647 (1987).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 6, 7 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adams et al. in view of Yurkewicz et al. (5,975,369).

Adam et al. does not disclose the cover comprising a tamper-evident band.

Yurkewicz et al. teach a cover of a container closure having a tamper-evident band.

Therefore, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to make the Adams et al. cover with a tamper-

evident band, as taught by Yurkewicz et al., in order to provide an evident of the cover in the first use has been opened.

Response to Arguments

7. Applicant's arguments with respect to claims 1-20 have considered but are moot in view of the new ground(s) of rejection.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Beck et al. and Glynn et al. teach covers having ribs.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIEN TM NGO whose telephone number is 571-272-4545. The examiner can normally be reached on Monday through Friday from 8:30 AM -6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LEE YOUNG can be reached on 571-272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 25, 2005

LIEN TM NGO
Primary Examiner
Art Unit 3727

